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Attorney for Defendant Michael Post

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DAVID WEISMAN, an individual,  
Plaintiff,  
vs.  
SANRIO FAR EAST COMPANY, a Japanese  
corporation, et al.  
Defendants.

**Case No. LACV11-6033 GW (JCx)**

**Hon. George H. Wo**

**Motion for Summary Judgment**

Date: 11/4/2013  
Time: 8:30AM  
Location: Courtroom 10

MICHAEL POST, an individual,  
Counter- Plaintiff,  
vs.  
DAVID WEISMAN, an individual,  
Counter-Defendant,

Trial Date: None set.

MICHAEL POST, an individual,  
Cross-Plaintiff,  
vs.  
SANRIO FAR EAST COMPANY, a Japanese  
corporation.  
Cross-Defendants,

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 4, 2013, at 8:30 AM in Courtroom 10 of  
the above-entitled Court located at 312 N. Spring Street, Los Angeles, California, Defendant

Michael Post ("Defendant") will and hereby does move the court for an order granting his Motion for Summary Judgment against Plaintiff David Weisman

Dated: 10/2/2013

JURIS DOCTOR CALIFORNIA

/s/ Geoff Conner Newlan

Geoff Conner Newlan

Attorney for Defendant Michael Post

### MEMORANDUM OF POINTS AND AUTHRORITIES

Plaintiff David Weisman sued Defendant Michael Post (and other defendants) for basically two things:

#### **(1) Violation of Copyright**

- 1st Cause of Action: Copyright Infringement
- 2nd Cause of Action: Contributory Copyright Infringement

#### **(2) Violation of California Civil Code 3344.1**

- 3rd Cause of Action: Violation of California Statutory Right of Publicity (Cal. Civ. Code section 3344.1
- 4th Cause of Action: Declaratory Relief that plaintiff is 100% owner of "Publicity Rights" of Edie Sedgwick.

On 10/2/12 this court entered an Order on Joint Stipulation of Dismissal of Certain Claims with Prejudice (Document #62), which dismissed "with prejudice" the 1st and 2nd causes of action against all defendants, including Michael Post, and dismissed "with prejudice" the 3rd and 4th causes of action against all of the other defendants. Thus, Michael Posts's motion for summary judgment relates to the remaining 3rd and 4th causes of action.

### STATEMENT OF UNDISPUTED FACTS

Michael Post was married to Edie Sedgwick at her death in 1971.

Edie Sedgwick died intestate as a resident of California.

1 During her lifetime Edie Sedgwick entered into an agreement with David Weisman in  
 2 December 1970 that gave him certain rights to use images during the three week term of the  
 3 agreement and to use her name, likeness and biograph to advertise and publicize the movie they  
 4 were making.

### 5 **SUMMARY JUDGMENT STANDARD**

6 Summary Judgment should be granted if there are no material issues of fact and the  
 7 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

### 8 **DEFENDANT IS THE SUCCESSOR-IN-INTEREST**

9 California Civil Code Section 3344.1 provides that a deceased personality's rights in his  
 10 or her name, voice, signature, photograph, or likeness is a personal property right that can pass  
 11 through the laws of intestacy.

12 Edie Sedgwick died intestate without ever having had children and Defendant Michael  
 13 Post was her surviving spouse. As such, Civil Code Section 3344.1 (d) (1) provides, in pertinent  
 14 party that “the entire interest in those rights belong to the surviving spouse of the deceased  
 15 personality.”

16 As such, no one can use Edie Sedgwick's “name, voice, signature, photograph, or  
 17 likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising  
 18 or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior  
 19 consent” of Defendant Michael Post.

20 Defendant Michael Post filed a notice of the Secretary of State pursuant to Civil Code  
 21 3344.1 and he has exercised his right as successor-in-interest to authorize commercial use of the  
 22 name and likeness of Edie Sedgwick.

23 As Edie Sedgwick's successor-in-interest, Michael Post has the legal right to control the  
 24 commercial use of her “name, voice, signature, photograph, or likeness, in any manner, on or in  
 25 products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases  
 26 of, products, merchandise, goods, or services,” except the right to those things that she disposed  
 27 of by contract during her lifetime. The last sentence of Civ. Code section 3344.1(b) provides:  
 28

1 "Nothing in this section shall be construed to render invalid or unenforceable any contract  
 2 entered into by a deceased personality during his or her lifetime by which the deceased  
 3 personality assigned the rights, in whole or in part, to use his or her name, voice, signature,  
 4 photograph or likeness, regardless of whether the contract was entered into before or after  
 5 January 1, 1985."

6 Plaintiff David Weisman claims Edie Sedgwick transferred to him all of the rights  
 7 recognized in Civ. Code section 3344.1 when, in 1970, he employed her for three (3) weeks to  
 8 finish the movie "CIAO! MANHATTAN," which had been started several years before.

### 9 **I. WHAT THE AGREEMENT MEANS**

10 This court has already ruled on what the 1970 Agreement means.

11 On Monday 4/22/13 this court interpreted the contract, to wit:

12 **1. Commercial Use of Images:** The court found: "So, therefore, the producer [David  
 13 Weisman] owns all of her images that were produced as a result of that three week or longer,  
 14 slightly longer period when she was making the movie...." (Court Transcript from 4/22/13: Page  
 15 7, lines 13-15) Page 7 of that transcript is attached, marked **EXHIBIT A**.

16 The court stated more explicitly that as the owner of these images, the producer can  
 17 publicize that as the publisher wishes, and can also utilize these images "in cups, in T-shirts, in  
 18 magazines, in whatever that the producer wants to do." (Court Transcript from 4/22/13: Page 7,  
 19 lines 16-20)

20 Later in that hearing this Court emphasized what this contract gave David Weisman:

21 "...in other words, [David Weisman] can use whatever [he] generated during that period  
 22 of time. Those were her services." (Court Transcript from 4/22/13: Page 9, lines 7-9) Page 7 of  
 23 that transcript is attached, marked **EXHIBIT B**.

24 This Court found that as to any other images of Edie Sedgwick, which were not the result  
 25 of her three weeks of services under this agreement, David Weisman does not own any other  
 26 images of Edie Sedgwick and that she did not grant him any rights related to those other images.  
 27 (Page 9, lines 16-21).  
 28

1           **2. Use of “name, likeness and biography”:** The court also found that Edie Sedgwick  
 2 granted David Weisman “the right to utilize [her] name, likeness and biography in connection  
 3 with advertising or publicizing the motion picture.” (Court Transcript from 4/22/13: Page 7, lines  
 4 10-12)

### 5           **CONCLUSION**

6           Michael Post is 100% successor-in-interest to Edie Sedgwick under Civ. Code section  
 7 3344.1, but his right as successor-in-interest to the exclusive control of the commercial use of  
 8 Edie Sedgwick's “name, voice, signature, photograph, or likeness, in any manner, on or in  
 9 products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases  
 10 of, products, merchandise, goods, or services,” is subject to rights of David Weisman under the  
 11 contract Edie Sedgwick signed during her lifetime.

12           As such, David Weisman cannot prevail on his 3rd cause of action for statutory right of  
 13 publicity (Civ. Code Section 3344.1), as Michael Post is the 100% successor-in-interest of that  
 14 statutory right of publicity.

15           And, with regard to the 4th cause of action for declaratory relief, David Weisman can use  
 16 the images produced during the three week period of the 1970 employment agreement and he  
 17 can use Edie Sedgwick's name, likeness and biography in connection with advertising or  
 18 publicizing the motion picture Ciao! Manhattan, but has no other rights otherwise identified in  
 19 Civ. Code section 3344.1.  
 20

21 Dated: 10/2/2013

JURIS DOCTOR CALIFORNIA

/s/ Geoff Conner Newlan

Geoff Conner Newlan

Attorney for Defendant Michael Post

**Proof of Service**

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the county of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my home or business address is: 735 State Street, Suite 631, Santa Barbara, California 93101.

On 10/2/13, I served the foregoing document described as **Motion for Summary Judgment** on the interested parties in this action as set forth on the attached service list, as follows:

XX BY U.S. MAIL  
BY EXPRESS MAIL  
BY HAND DELIVERY

I hereby certify that I am a member of the Bar of the United State District Court, Central District of California. I hereby certify under the penalty of perjury that the foregoing is true and correct.

/s/ Geoff Conner Newlan  
Geoff Conner Newlan

**Service List:**

Graham B. Lippsmith  
GIRARDI | KEESE  
1126 Wilshire Boulevard  
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